

defendants by said statutes, and that no notice of action had been given to them.

5. Not guilty.

The plaintiff, in addition to the fifth and sixth replications demurred to, which will be found on pp. 346-7, took issue on all the pleas, and replied :

2. To the second and third pleas : that the defendants were not, on the said 24th December, 1873, a corporation duly formed in manner and form as alleged.

3. To the same pleas : that the plaintiff was not liable to be rated for school purposes in the said school section as alleged.

4. To the same pleas : that the said rate was not imposed by the said trustees as alleged.

The defendants joined issue on all the replications, besides demurring to the fifth and sixth.

It appeared that the school section No. 2 of Raleigh and Tilbury East, called a Union School Section, was formed on 24th December, 1873. The boundaries were as laid down in the by-law forming the section, of which the following is a copy :—

"A by-law to form a Union School Section for the Township of Raleigh and Tilbury East (passed this 24th December, 1873.) Whereas it is necessary to form a Union School Section for the Townships of Raleigh and Tilbury East. We, Stephen White, Reeve of Raleigh ; Alexander Coulter, Reeve of Tilbury East ; and Edmund B. Harrison, Inspector of Public Schools for the County of Kent, do hereby, by virtue of and under the authority of the Public School Act of the Province of Ontario now in force, enact : that the whole of Public School Section number six in the Township of Tilbury East, and the south-east half of lot number one in concession number thirteen, lots numbers one and two in concession fourteen, and lots numbers one hundred and sixty-two, one hundred and sixty-three, and one hundred and sixty-four on the Talbot Road, in the Township of Raleigh, be united for the purpose of forming oneschool section, and be hereafter known as Union School Section No. 2, Raleigh and Tilbury East ; and that John McDonald, of Tilbury East, is hereby authorized to call the first meeting for the election of public school trustees.

(Signed) "STEPHEN WHITE, Reeve of Raleigh.
"ALEXANDER COULTER, Reeve of Tilbury East.
"EDMUND B. HARRISON, I P. S., Kent."

The proceedings at the first meeting for the election of school trustees were quashed by the inspector, at the instance of a ratepayer, because the proceedings were brought to an end before the expiration of an hour.

The inspector ordered a second meeting, which was afterwards held, and at which the defendants were elected trustees for the new school section.

The ratepayers afterwards, on 17th March, 1874, at a special meeting for the purpose of arranging to build a school house, authorized the building of a new school house, and authorized the trustees to raise money in the section for the purpose.

At a meeting held on 13th July, 1874, two of the trustees only being present, the third having been notified and not attending, it was resolved, "that for the purpose of levying the rate to defray the expenses of building the school-house, that the total valuation of property in the section was \$22,894, and that it will require a rate of five cents in the dollar to raise \$1,150, the sum required to defray the expense of building the school house and its belongings." And the secretary was directed to make out the rate for the amount required from each township in proportion to their assessment, and to apply to the respective councils of Tilbury East and Raleigh for the loan.

On 31st July, 1874, two of the trustees, under the corporate seal of the section, made application in writing to the council of the township of Tilbury East for authority to borrow \$583, being the proportion of the Township of Tilbury East of the sum of \$1,144.70, and required the said sum to be paid, with interest thereon, in three equal annual payments.

On 25th November, 1874, a similar application was made by the same trustees, under the corporate seal of the section, to the council of the Township of Raleigh, for the sum of \$130, for the same purpose.

The council of Tilbury East took no notice of the application, but the council of Raleigh on 25th November, 1874, passed a by-law for the raising of the \$130 in the terms of the application.

The apparent inequality of the sums required from the two townships, and the apparent deficiency in the whole amount required, was explained as follows :—

Prior to the union, the Tilbury East part of the section (then section No. 6 in Tilbury East) had on hand \$322.04 for building purposes (their school house having been burned down.) After the

passing of the resolution of 13th July, 1874, directing a rate of five cents in the dollar to be imposed, applications were, as already mentioned, made by the trustees to the municipal councils of Raleigh and Tilbury East to pass by-laws to enable them to borrow money. The Raleigh Council passed a by-law, under which a debenture was issued, and the proceeds of this debenture, \$130, were paid to the trustees of the union section. The application to the Tilbury East council not having been acted upon, the whole sum required from Tilbury had therefore to be raised by rate. The Tilbury East part of the section was credited with the \$322.04 on hand as above mentioned. The Raleigh part was credited with the \$130 paid to the trustees by the Raleigh council, as above mentioned ; and to realize the sum required from each part of the Union section required a rate of 3½ cents to be imposed on that part of the section in Tilbury, and a rate of two cents and one fifty-third of a cent on that part of the section in Raleigh, which was done.

Besides, there was a difference of values between the two townships. On a value of \$800 in Tilbury East, \$24.05 was authorized to be levied, while on the same value in Raleigh only \$20 was authorized to be levied.

On this basis a rate bill was, on 7th January, 1875, made out for the section. On the same day, there being only two trustees present (the third although notified, not attending), the defendant Manning, who was one of the two trustees present, was authorized to collect the rate without compensation of any kind.

A warrant under the hands of the same two trustees (of whom Manning was one), and under the corporate seal of the section was made out, directed to the defendant Manning, and placed in his hands.

The name of Thomas Askew and his farm within the section appeared on the schedule annexed to the warrant, for \$33.32.

Manning called upon him and demanded the taxes, but he refused to pay. Hence the distress.

Counsel for the plaintiff asked the inspector if he gave notice of the intended alteration of the section. Counsel for the defendant objected to the question about notice in this action after the existence of the corporation had been proved.

The learned Judge rejected the evidence, holding that the corporation had been properly formed for the purposes of the present action.

At the close of the case, *Robinson, Q.C.*, for the plaintiff, mentioned that there was an objection going to the formation of the school section not determined by the demurrer, viz., that there was no power under any circumstances to form a union section by adding to one section parts of other sections ; and here they had assumed to form such a section by adding to section six in Tilbury, parts of two sections in Raleigh, thus altering the boundaries of those two sections. He contended that the judgment on demurrer decides only that where there is power to form a section on giving a specified notice or complying with other formalities, and it is done without the proper notice, or some other formality is omitted, the constitution of the section is not open to inquiry in an action. That, he argued, may well be, but it might not follow that such inquiry was precluded when the section neither had nor could have been formed, and the trustees of it, therefore, never were or could have become a corporation.

It was also objected that the rate was unequal, and that the warrant could not be made by two of the trustees to one of the two signing it.

The learned Judge, without deciding any of the questions raised, found a verdict for the defendants' reserving leave to the plaintiff's counsel to move to enter a verdict for the plaintiff upon any ground he saw fit.

During Easter term, May 27, 1876, *C. Robinson, Q.C.*, obtained a rule nisi calling on the defendants to shew cause why the verdict should not be set aside and a verdict entered for the plaintiff, on the ground that on the law and evidence the plaintiff was entitled to recover ; the taking and detention of the plaintiff's goods by the defendants not having been justified, and the defendants' pleas of justification not having been proved ; that the school section for which defendants assumed to act as trustees was not shewn to have been legally formed or to exist, and it was shewn that the said section was illegally formed ; nor was it shewn that the plaintiff was liable to be rated or levied upon for school purposes in any section for which defendants were trustees ; that the taking of plaintiff's goods was illegal and unauthorized, the rate for which the goods were seized being unequal, and the warrant under which said distress was made being insufficient and illegal ; or for a new trial for rejection of evidence offered to shew that the section was not legally formed.

During Trinity term, September 8, 1876, *J. K. Kerr, Q.C.*, shewed cause. The section was properly constituted, and, whether it was or not, the question was not one which could, according to